

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,)	
)	
Respondent,)	NO. 09-CR-0210-B
)	
v.)	
)	
JESSE WILLIAM MCGRAW,)	
Petitioner.)	

MOTION UNDER TITLE 28 U.S.C. SECTION 2255
TO VACATE AND SET ASIDE THE JUDGMENT OF CONVICTION

COMES NOW defendant herein, JESSE WILLIAM MCGRAW, a federal prisoner, by and through his new attorney, Edmundo Espinoza, and herein files this Motion to Vacate and Set Aside the Judgment of Conviction entered on March 17, 2011.

Defendant filed a Notice of Appeal on March 21, 2011, under Case Number 11-10302, and that direct appeal to the Fifth Circuit Court of Appeals was dismissed by defendant on February 7, 2012, which order of dismissal was entered on February 10, 2011. *Thus, this motion to Vacate and Set Aside the Judgment of Conviction is timely, under Title 28 United States Code Section 2255(f), because the 1-year period of limitation runs from the latest of, (1) the date on which the judgment of conviction becomes final, i.e. February 7, 2012.*

This motion is filed in order to toll the statute of limitations from running and it is based on the enclosed declaration of new counsel, Edmundo Espinoza, attesting to the reasons why the motion cannot be fully filed with this Court at this time, and is based on all of the records and files in this case and on any and all matters that may be filed within the herein requested time, with leave of this Court.

It is thus requested that this Court permit the filing of an Amended Motion once the facts and the applicable law have been ascertained by new counsel for defendant.

Custodial Status.-

Defendant is presently in the custody of the United States Bureau of Prisons, housed at the Federal Correctional Institution ("FCI"), Seagoville, Texas, under USM Registration No. 38690-177.

I.

DECLARATION OF COUNSEL FOR DEFENDANT

I, EDMUNDO ESPINOZA, declare:

I am an attorney duly admitted to practice law before this Court and before the United States Court of Appeals for the Fifth Circuit.

I am filing this declaration in support of this motion to Vacate and Set Aside the Judgment of Conviction entered on March 17, 2011.

If called to testify about the facts herein stated, this declarant declares that he is competent to testify as to those matters and that they are within his personal knowledge and are true and correct.

In or about the early part of December 2012 this declarant was contacted by defendant's wife to look into a prison administrative matter facing defendant at the Federal Correctional Institution, Seagoville, Texas, at that time. This declarant then visited defendant at the correctional institution on December 18, 2012. Several administrative matters were discussed including the fact that he had been appointed an appellate attorney and that some other court matters were pending. Declarant was neither informed nor he inquired about any pending

appellate deadlines nor declarant reviewed any of defendant's criminal discovery. It was not relevant.

During the remaining days of December and the month of January 2013, this declarant worked on defendant's administrative and civil matters.

It was not until the end of the week of February 1, 2013, that declarant became aware that the dismissal of the appeal then pending before the Fifth Circuit Court of Appeals was dated February 7, 2012. This declarant immediately requested from prison officials to schedule a legal visit with defendant at the FCI, Seagoville, which took place on February 6, 2013. The issue of the deadline for the filing of this motion was addressed and it was then determined that relatives and friends would retain this declarant's professional services to file said petition.

As can be appreciated from the facts above, this declarant has not had a chance to entirely review the discovery in this case, any appellate pleadings, any trial court hearing transcripts, and any applicable law, in order to fully document and properly file a motion under Title 28 United States Section 2255, to Vacate and Set Aside the Judgment of Conviction.

It is therefore respectfully requested that this Court allow 90-days from the filing of this motion for new counsel for defendant to AMEND this motion and file a complete writ.

I declare under penalty of perjury under the laws of the United States that the above is true and correct and that this declaration was executed this February 7, 2013, at Dallas, Texas.

/s/ edmundo espinoza
EDMUNDO ESPINOZA, attorney for
defendant Jesse W. McGraw
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Certificate of Service

I herein certify that on February 7, 2013, I electronically filed the above document with the Clerk of the United States District Court for the Northern District of Texas using the etronic case filing system of the court.

/s/ *edmundo espinoza*
EDMUNDO ESPINOZA, attorney for
Defendant Jesse W. McGraw